

# TJAGSA Practice Notes

*Faculty, The Judge Advocate General's School*

The following notes advise attorneys of current developments in the law and in policies. Judge advocates may adopt them for use as locally published preventive law articles to alert soldiers and their families about legal problems and changes in the law. The faculty of The Judge Advocate General's School, U.S. Army, welcomes articles and notes for inclusion in this portion of *The Army Lawyer*; send submissions to The Judge Advocate General's School, ATTN: JAGS-DDL, Charlottesville, VA 22903-1781.

## ***Consumer Law Note***

### **The Federal Trade Commission Teams with State and Local Law Enforcement to Stop Scams**

The Federal Trade Commission (FTC) recently announced the results of operation "Peach Sweep" in Georgia.<sup>1</sup> That operation was conducted in cooperation with several other federal agencies as well as state and local law enforcement.<sup>2</sup> It targeted a number of different companies which, according to the FTC, were defrauding consumers. As a result, the FTC was able to secure temporary injunctions against the companies and filed complaints for permanent injunctions and other relief for consumers.<sup>3</sup> The companies' operations were essentially of two types and warrant attention from legal assistance practitioners since they are the types of scams that might be perpetrated against soldiers.

The first scam was alleged to have been run primarily by an organization called SureCheK Systems, Inc.<sup>4</sup> The FTC alleges that this company conducted a credit card scam under the names Consumer Credit Corporation and Consumer Credit Development Corporation.<sup>5</sup> SureCheK is alleged to have contacted consumers by phone and guaranteed them an unsecured major credit card with "absolutely no security deposit," regardless of their credit history.<sup>6</sup> In order to receive this card, SureCheK required a fee ranging from \$79.95 to \$130.00.<sup>7</sup> The FTC claims that, during the course of the solicitation, SureCheK would acquire the consumer's checking account information and use that information to debit the fee directly from the account, many times without the consumer's express authorization.<sup>8</sup> The FTC's complaint further alleges that the consumers either did not receive the credit card promised or had to pay additional fees and submit additional applications to the bank which actually issued the card.<sup>9</sup> The complaint alleges that this conduct violates the Federal Trade Commission Act<sup>10</sup> and the Telemarketing Sales Rule.<sup>11</sup>

The second scam is alleged to involve a company operating under the name Resort Sales Group, Inc.<sup>12</sup> This company marketed so-called "luxury vacations" via telephone. The FTC alleges that Resort Sales would offer combination vacations in Florida and the Bahamas with a round-trip cruise between the two points.<sup>13</sup> The telemarketer would claim the trip was valued at \$1,500 and would offer it to the consumer for between \$498 and \$598.<sup>14</sup> What the consumer actually received was a "con-

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1. Federal Trade Commission News Release, *Federal, State, Local Law Enforcers Target Bogus Telemarketers: "Peach Sweep" Targets Bad Apples in Georgia* (visited 7 Aug. 1997) <<http://www.ftc.gov/www/opa/9707/peach.htm>> [hereinafter FTC News].

2. *Id.*

3. *Id.*

4. *Id.*

5. Complaint, Federal Trade Comm'n v. SureCheK Sys., Inc., No. 1-97-CV-2015 (N.D. Ga. filed July 15, 1997). The complaint is available in <<http://www.ftc.gov/www/os/9707/complainark.htm>>.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. 15 U.S.C.A. § 45(a) (West 1997).

11. 16 C.F.R. Part 310 (1997).

12. FTC News, *supra* note 1.

13. *Id.*

firmation package” containing a video, some advertisements, and a reservation form. The consumer would have to pay another \$198 to \$298 to book the accommodations at the time they made the reservation.<sup>15</sup> The FTC alleges that consumers who went through with the vacation were given a ferry boat ride to the Bahamas, not a “luxury cruise.”<sup>16</sup> The consumers further allege that the accommodations were “vermin-infested” unless they paid an additional fee to “upgrade” their room.<sup>17</sup>

Information about companies that conduct questionable business practices can be invaluable for preventive law programs. In order to stay abreast of current scams that may affect soldiers, legal assistance practitioners should monitor information released by the FTC through its web site<sup>18</sup> or the *FTC News Notes* newsletter.<sup>19</sup> The cases discussed above demonstrate the continuing need to educate soldiers and their families on the fact that deals that appear too good to be true usually are too good to be true. Major Lescault.

### ***Family Law Note***

#### **Federal Office of Management and Budget Approves Federal Forms for Interstate Family Support Cases**

The Welfare Reform Act of 1996<sup>20</sup> required all states to adopt the Uniform Interstate Family Support Act (UIFSA)<sup>21</sup> by 1 January 1998. In addition, the Welfare Reform Act mandated the production of federal forms for use in interstate family sup-

port cases.<sup>22</sup> The Office of Management and Budget (OMB) approved the forms on 30 April 1997, and they are now available for use in all interstate support cases.<sup>23</sup>

One of the significant differences between the old Uniform Reciprocal Enforcement of Support Act<sup>24</sup> system and the UIFSA system is that the UIFSA is applicable to all IV-D<sup>25</sup> cases and cases pursued by private attorneys.<sup>26</sup> The UIFSA governs the establishment, enforcement, and modification of child support orders in interstate cases. All interstate family support cases, therefore, should begin to look alike with the use of the federal forms.

The OMB approved the following forms: (1) Transmittal #1 (Initial Request), (2) Transmittal #2 (Subsequent Actions), (3) Transmittal #3 (Request for Assistance/Discovery), (4) Registration Statement, (5) Locate Data Sheet, (6) Uniform Support Petition, (7) Affidavit In Support of Establishing Paternity, and (8) General Testimony. The Federal Office of Child Support Enforcement (OCSE), as well as local child support enforcement agencies, can provide copies of the forms. The forms are also available on the OCSE homepage at <http://www.acf.dhhs.gov/ACFPrograms/CSE> (look at the Policy Documents segment then chronological view; and the forms are file 97-06).

Whether the petitioner seeks establishment, enforcement, or modification from the tribunal determines which of the federal forms are necessary. A UIFSA Forms Matrix is available on the

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14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. <<http://www.ftc.gov>>.

19. The printed newsletter is available by writing to the Federal Trade Commission, Office of Public Affairs, Washington, D.C. 20580.

20. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) [hereinafter Welfare Reform Act].

21. 9 U.L.A. 229 (1993) (amended 1996). Copies of the UIFSA and the 1996 amendments are available from the National Conference of Commissioners on Uniform State Laws, 676 North St. Clair Street, Suite 1700, Chicago, Illinois 60611, telephone (312) 915-0195. The Commission will provide copies by mail, fax, or e-mail. Thirty-nine states and the District of Columbia have adopted the UIFSA, and legislation is pending in eight other states. The states with the UIFSA are: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the District of Columbia. Legislation is pending in the following states: California, Connecticut, Georgia, Hawaii, Mississippi, Nevada, New Hampshire, and New Jersey.

22. See Welfare Reform Act, *supra* note 20, § 368.

23. *New UIFSA Forms*, C.S.R. (Child Support Report, Office of Child Support Enforcement, Wash., D.C.) June 1997, at 10.

24. 9B U.L.A. 567 (1953) (amended 1958). The Uniform Reciprocal Enforcement of Support Act was extensively revised in 1968 and called the Revised Uniform Reciprocal Enforcement of Support Act. All 50 states eventually adopted some version of the statute.

25. The IV-D cases are cases worked by the Child Support Enforcement Agency operating under Section IV-D of the Social Security Act.

26. See 9 U.L.A. § 309.

OCSE homepage to assist petitioners in determining which forms are required for their specific needs.

An understanding of the UIFSA is vital to the practice of family law. This is particularly true in military legal assistance because of the mobility of the clientele. An intrastate divorce case today quickly becomes an interstate modification case tomorrow. Legal assistance attorneys must be familiar with the workings of the UIFSA and the new federal forms in order to counsel clients adequately on all issues of family support. Major Fenton.

## ***Tax Law Note***

### **Tax Consequences of Dividing the Proceeds From the Sale of the Family Residence**

The Tax Court recently ruled that a taxpayer is responsible for one-half of the gain on the sale of a home, even though a divorce court awarded his spouse seventy-five percent of the sale proceeds.<sup>27</sup> Mr. and Mrs. Urbauer were married in 1966 and divorced in 1990. During that time period, they jointly owned their principal residence. Upon their divorce, they agreed to sell their principal residence. Some of the proceeds were to go toward discharging debts that the parties had incurred during the marriage. The remainder was to be divided, with seventy-five percent going to Mrs. Urbauer and twenty-five percent going to Mr. Urbauer.

After the sale, Mr. Urbauer filed his tax return and was later audited. The Internal Revenue Service (IRS) determined that Mr. Urbauer owed taxes on fifty percent of the gain from the sale of the home. The IRS took this position because neither the settlement agreement nor the divorce court changed the ownership interest in the home. Since the home was owned by Mr. and Mrs. Urbauer as tenants by the entirety, Mr. Urbauer had a fifty percent ownership interest in the home. As a result, he was responsible for fifty percent of the gain.<sup>28</sup>

Legal assistance attorneys should be careful when drafting separation agreements that call for the sale of the client's principal residence and a division of the proceeds. If the house is jointly owned and the proceeds are to be divided equally, there is no problem, so long as the client is aware that he will be responsible for the tax on one-half of the gain on the sale of the home. If the proceeds are to be divided in a manner other than fifty-fifty, the attorney should ensure that the ownership interest in the home is also changed. For example, if the client is only going to get twenty-five percent of the proceeds from the sale of the home, the attorney should ensure that the ownership interest is changed so that the client only owns twenty-five percent of the home upon its sale. This transfer of ownership will be a nontaxable event.<sup>29</sup> If the property settlement is properly drafted, the client would only be responsible for twenty-five percent of the gain. Lieutenant Colonel Henderson.

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27. Urbauer v. Commissioner, 73 T.C.M. (CCH) 2788 (1997).

28. *Id.*

29. I.R.C. § 1041 (1994).